



January 23, 2002

HOUSE BILL No. 1070

DIGEST OF HB 1070 (Updated January 22, 2002 11:56 AM - DI 96)

Citations Affected: IC 22-3.

Synopsis: Average weekly wage for worker's compensation. Provides that when an employee who has sustained a compensable injury or occupational disease returns to work and suffers a later period of disability due to that injury or disease after July 1, 2002, the average weekly wage for the period of disability is determined based on the average weekly wage at the time of the disability subject to the maximum average weekly wage in effect as of the last day worked. Provides for a credit for an assessment made to the second injury fund to an employer who has made payment to an employee injured before January 1, 2003, and who had a later period of disability entitling the employee to an increase in the average weekly wage.

Effective: July 1, 2002.

**Stilwell, Young D, Thompson,
Liggett**

January 8, 2002, read first time and referred to Committee on Labor and Employment.
January 22, 2002, reported — Do Pass.

HB 1070—LS 6661/DI 96+



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January 23, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1070

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-3-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2002]: Sec. 8. With respect to injuries occurring
3 prior to April 1, 1951, causing temporary total disability for work, there
4 shall be paid to the injured employee during such total disability for
5 work a weekly compensation equal to fifty-five percent (55%) of ~~his~~
6 **the injured employee's** average weekly wages for a period not to
7 exceed five hundred (500) weeks. With respect to injuries occurring on
8 and after April 1, 1951, and prior to July 1, 1971, causing temporary
9 total disability for work, there shall be paid to the injured employee
10 during such total disability a weekly compensation equal to sixty per
11 cent (60%) of ~~his~~ **the injured employee's** average weekly wages for a
12 period not to exceed five hundred (500) weeks. With respect to injuries
13 occurring on and after July 1, 1971, and prior to July 1, 1974, causing
14 temporary total disability for work, there shall be paid to the injured
15 employee during such total disability a weekly compensation equal to
16 sixty per cent (60%) of ~~his~~ **the injured employee's** average weekly
17 wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter**, a period

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not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of ~~his~~ **the injured employee's** average weekly wages up to one hundred and thirty-five dollars (\$135.00) average weekly wages, as defined in section 22 of this chapter, for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of ~~his~~ **the injured employee's** average weekly wages, as defined in ~~IC 22-3-3-22~~, **section 22 of this chapter**, for a period not to exceed five hundred (500) weeks. **When an employee who has sustained a compensable injury returns to work and suffers a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of the disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in section 22 of this chapter.** Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

SECTION 2. IC 22-3-3-13, AS AMENDED BY P.L.202-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable

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prospective period, the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment. **All entities liable for and paying an assessment under this subsection are entitled to a credit against the assessment for the payments made the same year on which the assessment was based. These payments must have been made to an employee who was injured before January 1, 2003, and who had a later period of disability entitling the employee to an**

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1 increase in the average weekly wage, as set forth in section 8 of this
 2 chapter. Any credit due shall be computed by the following
 3 formula:

4 **STEP ONE: Determine the amount of compensation the**
 5 **employee actually received based on the average weekly wage**
 6 **as of the last day worked before the later period of disability.**

7 **STEP TWO: Determine the amount of compensation the**
 8 **employee would have received based on the average weekly**
 9 **wage at the time of the original compensable injury.**

10 **STEP THREE: Determine the greater of zero (0) or the result**
 11 **of:**

12 **(A) the STEP ONE amount; minus**

13 **(B) the STEP TWO amount.**

14 (d) The board shall enter into a contract with an actuary or another
 15 qualified firm that has experience in calculating worker's compensation
 16 liabilities. Not later than September 1 of each year, the actuary or other
 17 qualified firm shall calculate the recommended funding level of the
 18 fund based on the previous year's claims and inform the board of the
 19 results of the calculation. If the amount to the credit of the fund is less
 20 than the amount required under subsection (c), the board may conduct
 21 an assessment under subsection (c). The board shall pay the costs of the
 22 contract under this subsection with money in the fund.

23 (e) An assessment collected under subsection (c) on an employer
 24 who is not self-insured must be assessed through a surcharge based on
 25 the employer's premium. An assessment collected under subsection (c)
 26 does not constitute an element of loss, but for the purpose of collection
 27 shall be treated as a separate cost imposed upon insured employers. A
 28 premium surcharge under this subsection must be collected at the same
 29 time and in the same manner in which the premium for coverage is
 30 collected, and must be shown as a separate amount on a premium
 31 statement. A premium surcharge under this subsection must be
 32 excluded from the definition of premium for all purposes, including the
 33 computation of agent commissions or premium taxes. However, an
 34 insurer may cancel a worker's compensation policy for nonpayment of
 35 the premium surcharge. A cancellation under this subsection must be
 36 carried out under the statutes applicable to the nonpayment of
 37 premiums.

38 (f) The sums shall be paid by the board to the treasurer of state, to
 39 be deposited in a special account known as the second injury fund. The
 40 funds are not a part of the general fund of the state. Any balance
 41 remaining in the account at the end of any fiscal year shall not revert
 42 to the general fund. The funds shall be used only for the payment of



awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.



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1 SECTION 3. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
4 context otherwise requires:

5 (a) "Employer" includes the state and any political subdivision, any
6 municipal corporation within the state, any individual or the legal
7 representative of a deceased individual, firm, association, limited
8 liability company, or corporation or the receiver or trustee of the same,
9 using the services of another for pay. A parent corporation and its
10 subsidiaries shall each be considered joint employers of the
11 corporation's, the parent's, or the subsidiaries' employees for purposes
12 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
13 employees shall each be considered joint employers of the employees
14 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
15 IC 22-3-3-31. If the employer is insured, the term includes the
16 employer's insurer so far as applicable. However, the inclusion of an
17 employer's insurer within this definition does not allow an employer's
18 insurer to avoid payment for services rendered to an employee with the
19 approval of the employer. The term also includes an employer that
20 provides on-the-job training under the federal School to Work
21 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
22 IC 22-3-2-2.5.

23 (b) "Employee" means every person, including a minor, in the
24 service of another, under any contract of hire or apprenticeship, written
25 or implied, except one whose employment is both casual and not in the
26 usual course of the trade, business, occupation, or profession of the
27 employer.

28 (1) An executive officer elected or appointed and empowered in
29 accordance with the charter and bylaws of a corporation, other
30 than a municipal corporation or governmental subdivision or a
31 charitable, religious, educational, or other nonprofit corporation,
32 is an employee of the corporation under IC 22-3-2 through
33 IC 22-3-6.

34 (2) An executive officer of a municipal corporation or other
35 governmental subdivision or of a charitable, religious,
36 educational, or other nonprofit corporation may, notwithstanding
37 any other provision of IC 22-3-2 through IC 22-3-6, be brought
38 within the coverage of its insurance contract by the corporation
39 by specifically including the executive officer in the contract of
40 insurance. The election to bring the executive officer within the
41 coverage shall continue for the period the contract of insurance is
42 in effect, and during this period, the executive officers thus



brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to

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IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a

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1 student performing services for an employer as part of an
 2 approved program under IC 20-10.1-6-7 shall be considered a
 3 full-time employee for the purpose of computing compensation
 4 for permanent impairment under IC 22-3-3-10. The average
 5 weekly wages for such a student shall be calculated as provided
 6 in subsection (d)(4).

7 (4) The rights and remedies granted in this subsection to a minor
 8 under IC 22-3-2 through IC 22-3-6 on account of personal injury
 9 or death by accident shall exclude all rights and remedies of the
 10 minor, the minor's parents, or the minor's personal
 11 representatives, dependents, or next of kin at common law,
 12 statutory or otherwise, on account of the injury or death. This
 13 subsection does not apply to minors who have reached seventeen
 14 (17) years of age.

15 (d) "Average weekly wages" means the earnings of the injured
 16 employee in the employment in which the employee was working at the
 17 time of the injury during the period of fifty-two (52) weeks
 18 immediately preceding the date of injury, divided by fifty-two (52),
 19 except as follows:

20 (1) If the injured employee lost seven (7) or more calendar days
 21 during this period, although not in the same week, then the
 22 earnings for the remainder of the fifty-two (52) weeks shall be
 23 divided by the number of weeks and parts thereof remaining after
 24 the time lost has been deducted.

25 (2) Where the employment prior to the injury extended over a
 26 period of less than fifty-two (52) weeks, the method of dividing
 27 the earnings during that period by the number of weeks and parts
 28 thereof during which the employee earned wages shall be
 29 followed, if results just and fair to both parties will be obtained.
 30 Where by reason of the shortness of the time during which the
 31 employee has been in the employment of the employee's employer
 32 or of the casual nature or terms of the employment it is
 33 impracticable to compute the average weekly wages, as defined
 34 in this subsection, regard shall be had to the average weekly
 35 amount which during the fifty-two (52) weeks previous to the
 36 injury was being earned by a person in the same grade employed
 37 at the same work by the same employer or, if there is no person so
 38 employed, by a person in the same grade employed in the same
 39 class of employment in the same district.

40 (3) Wherever allowances of any character made to an employee
 41 in lieu of wages are a specified part of the wage contract, they
 42 shall be deemed a part of his earnings.



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(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(5) In computing the average weekly wage for an employee who has sustained a compensable injury who has returned to work and has a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of that disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in IC 22-3-3-22.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.



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(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 4. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to occupational diseases occurring:

(1) on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be:

(A) not more than one hundred thirty-five dollars (\$135); and

(B) not less than seventy-five dollars (\$75);

(2) on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be:

(A) not more than one hundred fifty-six dollars (\$156); and

(B) not less than seventy-five dollars (\$75);

(3) on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be:

(A) not more than one hundred eighty dollars (\$180); and

(B) not less than seventy-five dollars (\$75);

(4) on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be:

(A) not more than one hundred ninety-five dollars (\$195); and

(B) not less than seventy-five dollars (\$75);

(5) on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be:

(A) not more than two hundred ten dollars (\$210); and

(B) not less than seventy-five dollars (\$75);

(6) on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be:

(A) not more than two hundred thirty-four dollars (\$234); and

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(B) not less than seventy-five dollars (\$75); and
 (7) on and after July 1, 1984, and before July 1, 1985, the average
 weekly wages are considered to be:

- (A) not more than two hundred forty-nine dollars (\$249); and
- (B) not less than seventy-five dollars (\$75).

(b) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1985, and before
 July 1, 1986, the average weekly wages are considered to be:

- (1) not more than two hundred sixty-seven dollars (\$267); and
- (2) not less than seventy-five dollars (\$75).

(c) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1986, and before
 July 1, 1988, the average weekly wages are considered to be:

- (1) not more than two hundred eighty-five dollars (\$285); and
- (2) not less than seventy-five dollars (\$75).

(d) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1988, and before
 July 1, 1989, the average weekly wages are considered to be:

- (1) not more than three hundred eighty-four dollars (\$384); and
- (2) not less than seventy-five dollars (\$75).

(e) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1989, and before
 July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

(f) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1990, and before
 July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

(g) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1991, and before
 July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

(h) In computing compensation for temporary total disability,

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temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

(1) not more than five hundred forty dollars (\$540); and

(2) not less than seventy-five dollars (\$75).

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

(1) not more than five hundred ninety-one dollars (\$591); and

(2) not less than seventy-five dollars (\$75).

(j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

(1) not more than six hundred forty-two dollars (\$642); and

(2) not less than seventy-five dollars (\$75).

(k) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

(1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:

(A) not more than six hundred seventy-two dollars (\$672); and

(B) not less than seventy-five dollars (\$75);

(2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732);

and

(B) not less than seventy-five dollars (\$75);

(4) with respect to occupational diseases occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to disablements occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822);

and

(B) not less than seventy-five dollars (\$75); and

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(6) with respect to disablements occurring on and after July 1, 2002:

- (A) not more than eight hundred eighty-two dollars (\$882); and
- (B) not less than seventy-five dollars (\$75).

(l) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:

- (1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;
- (2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;
- (3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;
- (4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;
- (5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;
- (6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and
- (7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1986, and before July 1, 1988, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1988, and before July 1, 1989, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) The maximum compensation with respect to disability or death occurring on and after July 1, 1989, and before July 1, 1990, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.



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(o) The maximum compensation with respect to disability or death occurring on and after July 1, 1990, and before July 1, 1991, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) The maximum compensation with respect to disability or death occurring on and after July 1, 1991, and before July 1, 1992, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(r) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(s) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July

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1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, two hundred ninety-four thousand dollars (\$294,000).

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of

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1 dividing the earnings during that period by the number of weeks and
 2 parts of weeks during which the employee earned wages shall be
 3 followed if results just and fair to both parties will be obtained. If by
 4 reason of the shortness of the time during which the employee has been
 5 in the employment of the employer or of the casual nature or terms of
 6 the employment it is impracticable to compute the average weekly
 7 wages for the employee, the employee's average weekly wages shall be
 8 considered to be the average weekly amount that, during the fifty-two
 9 (52) weeks before the date of disability, was being earned by a person
 10 in the same grade employed at the same work by the same employer or,
 11 if there is no person so employed, by a person in the same grade
 12 employed in that same class of employment in the same district.
 13 Whenever allowances of any character are made to an employee
 14 instead of wages or a specified part of the wage contract, they shall be
 15 considered a part of the employee's earnings.

16 **(w) In computing the average weekly wage for an employee who**
 17 **has sustained a compensable occupational disease who has**
 18 **returned to work and has a later period of disability due to that**
 19 **occupational disease after July 1, 2002, the average weekly wage**
 20 **for that period of disability shall be determined based on the**
 21 **average weekly wage at the time of that disability subject to the**
 22 **maximum average weekly wage in effect as of the last day worked,**
 23 **computed as set forth in this section.**

24 **(x)** The provisions of this article may not be construed to result in
 25 an award of benefits in which the number of weeks paid or to be paid
 26 for temporary total disability, temporary partial disability, or permanent
 27 total disability benefits combined exceeds five hundred (500) weeks.
 28 This section shall not be construed to prevent a person from applying
 29 for an award under IC 22-3-3-13. However, in case of permanent total
 30 disability resulting from a disablement occurring on or after January 1,
 31 1998, the minimum total benefit shall not be less than seventy-five
 32 thousand dollars (\$75,000).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1070, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 12, nays 0.

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